

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 13 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules
to Relocate the Digital Electronic Message
Service from the 18 GHz Band to the
24 GHz Band and to Allocate the
24 GHz Band for Fixed Service)

ET Docket No. 97-99

**OPPOSITION TO JOINT MOTION FOR LEAVE TO FILE SURREPLY AND
MOTION FOR EXPEDITED RESOLUTION**

WebCel Communications, Inc. ("WebCel"), by its attorneys and pursuant to Section 1.45(a) of the Commission's Rules, 47 C.F.R. § 1.45(a), opposes the "Joint Motion for Leave to File Surreply" filed on August 7, 1997 in this proceeding,¹ and seeks expedited resolution of the pending petitions for reconsideration (including WebCel's) of the underlying Commission Order.²

Digital Services Corporation, Microwave Services, Inc. and Teligent, L.L.C. (collectively, "Teligent") have asked leave to file a Surreply, asserting that "[s]everal of the Replies filed in this proceeding introduce a number of new legal arguments and technical claims to which the DEMS Licensees should be entitled to respond." Motion at 3. However, the Replies in this proceeding, in accordance with Commission Rules,³ respond only to issues raised by *Teligent* in its own opposition to the petitions for reconsideration. Teligent's Motion should accordingly be denied.

The Motion should also be denied in order to discipline Teligent's plain efforts to delay this proceeding by imposing needless costs and burdens on the Commission and the parties. In its July 7, 1997 opposition to Teligent's motion for waiver of the commission's page limits, WebCel predicted that Teligent was planning to "drown the Commission and the parties with paper in order

¹ Section 1.45(a) of the Commission's Rules allows parties 10 days to file oppositions to any motion, pleading or request, computed from the date of the original filing. 47 C.F.R. § 1.45(a).

² *Amendment of the Commission's Rules to Relocate the Digital Electronics Message Service from the 18 GHz Band to the 24 GHz band and to Allocate the 24 GHz Band for Fixed Service*, 12 FCC Rcd 3471 (1997) ("DEMS Order").

³ 47 C.F.R. § 1.45(b).

to obfuscate the simple issues presented for reconsideration.” That forecast has been proven by Teligent’s Surreply, which adds nothing but rhetoric to the already ample reconsideration record. WebCel emphasized in July, as it does now, that “the issues in this proceeding are [not] so complex as to require voluminous pleadings.” Because the Rules do not allow for the filing of a “Surreply” in this proceeding as a matter of right, Teligent’s Motion must be denied without at least a showing of good cause. Teligent has failed to even attempt such a showing, but rather has clearly demonstrated its willingness to waste the time and resources of the Commission and the parties with excessive and unnecessary pleadings.

The nature of the issues raised on reconsideration and the injury caused to parties by prolonged delay in resolving the controversy surrounding DEMS are such that the Commission should expedite its resolution. The fundamental issues raised on reconsideration question the Commission’s procedural actions in asserting the national security exemption to the APA and conducting the transfer — and four times upgrade in spectrum allocation — of DEMS licensees from 18 GHz to 24 GHz. Rapid resolution of these issues is required (a) to prevent improper build-out of the DEMS licenses at 24 GHz, and to avoid the creation of a reliance by the licensees on the faulty DEMS Order and its progeny;⁴ (b) because government activity improperly hidden behind the cloak of national security should be revealed as quickly as possible in promotion of the “government in sunshine” goals of the APA; and (c) because every day that passes without clarification and reversal of the *DEMS Order* imposes more damage on the spectrum auction process generally, and future auction bidders specifically, as a result of DEMS licensees being given 300 MHz of spectrum without an auction, and in the absence of public notice and comment. See WebCel’s “Reply to Teledesic and “Joint” Oppositions to Petitions for Reconsideration, Partial Reconsideration, and Clarification,” at 8 (July 23, 1997).

WebCel endorses the recommendation of the Millimeter Wave Carrier Association that the Commission should decide the reconsideration petitions in this docket within 30 days of the close

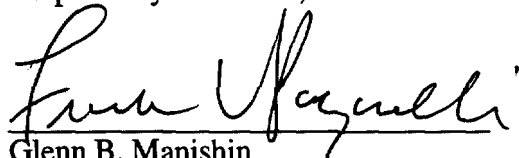
⁴ See Amendment of Commission’s Rules to Relocate the Digital Electronic Message Service from the 19 GHz Band to the 24 GHz Band for Fixed Service, DA 97-1285 (June 24, 1997).

of the pleading cycle, or by August 22, 1997. This schedule gives the Commission sufficient time to address the straight-forward issues of law raised in the petitions for reconsideration while minimizing the injury to parties that would otherwise result from more extended review of this now five-month old controversy.

CONCLUSION

For these reasons, the Commission should deny Teligent's Motion and expedite its review of the March 14, 1997 order in this docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank V. Paganelli", is written over a horizontal line.

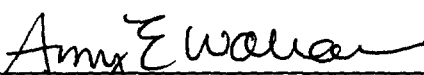
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Dated: August 13, 1997

CERTIFICATE OF SERVICE
ET Docket No. 97-99

I, Amy E. Wallace, do hereby certify on this 13th of August, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:



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